

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1237 of 1997

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

RAJPIPLA NAGARIK SAHAKARI BANKLIMITED

Versus

SAVITABEN HIRABHAI PAREKH HEIR OF DECD.HIRABHAI M PAREKH

Appearance:

1. Civil Revision Application No. 1237 of 1997
MR RM VIN for Petitioner No. 1
RULE SERVED for Respondent No. 1-4
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CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 12/05/2005

ORAL JUDGEMENT

1.0 The petitioner herein has challenged the order
dated 13/03/1997 passed by the learned Civil Judge

(S.D.), Bharuch in Misc.Civil Application No.28 of 1984, whereby the said application was dismissed.

2.0 Mr.R M Vin learned advocate for the petitioner has contended that in view of the provisions of Article 134 and Article 136 of the Limitation Act, 1963 (for short, "the said Act"), the issue in question will be governed by the provisions of Article 136 of the said Act and not by the provisions of Article 134 of the Act.

2.1 Mr.Vin learned advocate for the petitioner has relied upon a decision in the case on D. S. Pillay v. Madappan Pillay reported in A.I.R.(39) 1952 Travancore-Cochin pg.37. He has, therefore, submitted that the trial Court ought to have held that Article 136 of the said Act shall apply to the facts of the case on hand since the application was for execution of a decree.

3.0 I have heard learned advocate for the petitioner and perused the documents placed on record. The issue in question is squarely covered by a decision of the Apex Court in the case of Ganpat Singh (dead) by L.Rs. v. Kailash Shankar & ors., reported in A.I.R. 1987 S.C. pg.1443, wherein it has been held that Article 134 of the Limitation Act would be applicable to an application under Order 21 Rule 95 by the auction-purchaser for delivery of possession of the property sold in execution of a decree. The periods of limitation prescribed by Arts.136 and 134 are for two different purposes, the former being for the execution of a decree for possession in respect of which decree is passed and the latter for an application for delivery of possession of immovable property which is purchased in the course of execution of a decree. The two articles have nothing in common for their operation. The two articles are not in conflict with each other. An application for delivery of possession of immovable property purchased in execution cannot be construed as an application for execution of a decree for possession of property so as to invoke the provision of Art.136 of the Act. Merely because the auction-purchaser would be deemed to be a party in the suit in which the decree has been passed, as provided in cl.(a) of Explanation II to S.47 of the Code, and by virtue of cl.(b) of Explanation II all questions relating to delivery of possession of the property shall be deemed to be questions relating to execution, discharge or satisfaction of the decree within the meaning of S.47, an application for delivery of possession under O.21 R.95 cannot be equated with an application for the execution of a decree for possession so as to apply 12 years' period of limitation as prescribed by Art.136 of the Act.

4.0 In view of the principle laid down in the aforesaid decision, I am in complete agreement with the reasonings given by the trial Court. The trial Court was justified in arriving at the conclusion that the issue in question shall be governed by Article 136 of the said Act and not by Article 134 of the Act. Hence, I find no reason to interfere in this application. The application is, accordingly, dismissed. Rule is discharged.

(K. S. Jhaveri, J.)

pravin/